



Mortgage Exam Deadline Looms... Only 24% of Currently Licensed Loan Originators Have Passed The Utah Mortgage Lenders Exam!

Mortgage licensees have until January 1, 2005 to take and pass the Utah mortgage lenders exam or their licenses will be placed on an "inactive" status. Licensees placed on inactive status may not engage in originating residential mortgage loans.

Since the first of this year only 3,000 individuals have passed the exam. Just under 72% of those who have taken the exam have passed both parts (general and state portions of the exam). **Nearly 9,500 individuals still need to pass the mortgage lender exam prior to the first of the year!**

Despite the concerns expressed by some individuals that "the mortgage lenders exam is too hard", the current pass rate does not appear to be nearly as challenging as many have expressed. In fact, pass rates for the mortgage lenders exam is very similar to the pass rates for individuals taking real estate or appraisal exams in Utah.

Utah now has four testing center locations (Midvale, Provo, Ogden and Southern Utah). These centers are not being utilized to their full capacity. A simple math calculation will underscore the problem awaiting those who further delay taking the mortgage lender exam. From October until the first of the year there are approximately 60 testing days available. If the test centers were at full capacity (four Utah test centers, ten seat capacity, two test sessions per day), the testing service would only be able to accommodate 4,800! Keep in mind that the testing center also provides testing for the real estate and appraisal professions in Utah. Promissor, the testing contractor, has assured us that based on demand they will attempt to meet our testing needs (i.e. possible three test sessions per day, adding additional testing days, expanded facilities, etc). **However,**

procrastination on your part does not constitute an emergency on the Division or the testing services part.

There will be many that will have their licenses "inactivated" on January 2, 2005 because they failed to schedule to take and pass the mortgage lenders exam. These individuals will be out of business until they do so because they neglected to take the statutorily required Utah mortgage lenders exam. Avoid the unnecessary expense and time traveling to a testing center in another state. Avoid waiting six to eight weeks in 2005, while your mortgage lenders license is inactivated, to take the exam at a testing center location and time that is available, because you procrastinated taking the exam and couldn't get scheduled in Utah before the end of this year. We encourage you to schedule your exam immediately to avoid these time consuming and frustrating problems. Schedule to take the exam today! Contact Promissor at **1-800-274-7292** or www.promissor.com.



In this issue:

* Pre-License Education	page 2
* Continuing Education, part I	page 3
* Branch Offices	page 3
* Continuing Education, part II	page 4
* Completing Forms	page 5
* Exam and Licensing Rules	page 6
* Unprofessional Conduct	page 6
* New Legislation, New Changes	page 7
* Use of Change Cards	page 8
* Disciplinary Sanctions	page 10
* Exam Content Areas	page 16
* Predatory Lending: Buyer Beware	page 18
* Deadlines	page 19

Pre-License Education

“The Things You Need To Know”

Proposed Administrative Rules

On or after January 1, 2005, applicants for a mortgage officer license shall submit proof on the form required by the Division of successful completion of 20 hours of approved prelicensing education taken within one year of application.

On or after September 1, 2005, applicants for a Principal Lender license shall submit proof on the form required by the Division of successful completion of 40 hours of approved prelicensing education taken within one year of application. (Principal Lender license isn't required until January 1, 2006.)

Prelicense School Certification – A school offering prelicensing education must be certified by the Division of Real Estate before providing any education. Each school requesting approval of an education program designed to meet the prelicensing education requirements must make application for approval on the form prescribed by the Division.

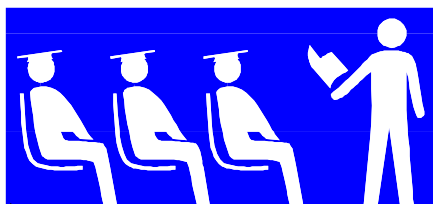
The application must include the non-refundable application fee and its name, address, school director, all owners of the school, a description of the type of school, and the school's facilities. All courses must be taught in an appropriate classroom facility and not in any private residence, except for courses approved for home-study.

Also a comprehensive course outline including a description of the course, length of time on each subject area broken down into classroom periods, a list of each instructor the school intends to use, shall be included in the application.

School applications will be available from the Division or from the Division's website after November 2, 2004. School certifications shall be for 24 months from the date of issuance.

Prelicense Instructor Certification –

An instructor shall not teach a prelicensing course by himself without having been certified by the Division before teaching the course. Each applicant for certification as a prelicensing instructor shall make application for approval on the form required by the Division.



An application for prelicense instructor is a more rigorous process than approval to become a continuing education instructor, although both require certifications.

Prelicense instructor applicants shall possess five years of experience in the residential mortgage industry within the past ten years, or have completed appropriate college-level courses specific to the topic proposed to be taught.

Instructor applications will be available from the Division or from the Division's website after November 2, 2004. Instructor certifications shall be for 24 months from the date of issuance.

Evidence of a minimum of twelve months of full-time teaching experience or an equivalent number of months of part-time teaching experience, or attendance at the Utah Division of Real Estate Instructor Development Workshops totaling at least two days in length is required. Passing an exam designed to test the knowledge of the subject matter proposed to be taught is also required.

Applicants for Principal Lending prelicensing courses should seek information from the Division on the requirements and necessary application forms.



Utah Real Estate Mortgage Monitor

Purpose: To provide information and education to the residential lending community which will help them be successful in competently serving Utah consumers.

Division Director Dexter Bell
Editor Mark Fagergren
Layout Jennifer Eatchel

Mortgage Regulatory Commission:
Chairman--A. Thompson Calder
Vice Chairman--Pierre A. Alley
Commissioners--Eva Rees, Julie McCan,
Alan Bowyer

Published by the
Utah Division of Real Estate
Department of Commerce
Heber M. Wells Building
160 East 300 South (84111)
P.O. Box 146711
Salt Lake City, UT 84114-6711
(801) 530-6747

© 2004 Utah Division of Real Estate
Div. of Real Estate home page address:
<http://www.commerce.utah.gov/dre>



Continuing Education

“The Things You Need To Know”

Part I

Existing Administrative Rules

Licenses renewing after January 1, 2004 have two years from their license renewal to complete 14 hours of continuing education. Five of the 14 hours must be on the following mandatory subjects: 3 hours – Federal and State Regulations; 2 hours – Ethics. The remaining 9 hours of continuing education electives may be on any subject identified in the mortgage exam content outline (see page 14 of this newsletter).

Any course whose content is based on the subjects contained in the exam content outline are acceptable for the elective 9 hours of continuing education. For example, if your license renewal is due November 30, 2004, you will have two years (December 1, 2004 to November 30, 2006) to complete 14 hours of acceptable continuing education. In this example, CE could not be taken for renewal credit if it occurred before 11/30/04. Three hours must be on federal and state regulations, 2 hours on ethics, and 9 hours on any subject on the exam content outline. Continuing education will not be accepted if it is too old i.e. you took it before your mortgage license renewal in 2004 or 2005.

When a licensee renews, they will need to submit their course completion certificates. Division staff will verify that 14 hours has been submitted, and that the 5 hours of mandatory education have been fulfilled. They will also

confirm that the 9 elective hours have been completed, and that all subjects come from the exam content outline. To be accepted for continuing education credit, each certificate will need to include the course title (that accurately describes the content of the course), the instructor's name and signature, the student's name and signature, the student's license number and the date of the course.

The following topics are unacceptable for continuing education credit for mortgage licensees:

Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, report writing, advertising or similar offerings;

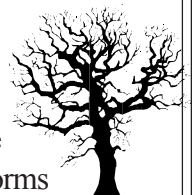
Offerings concerning physical well-being or personal development, such as personal motivation, stress management, time management, dress-for-success, or similar offerings; and

Meetings held in conjunction with the business... such as sales meetings, or in-house staff meetings unless the in-house staff meetings consist of training on the subjects on the Utah mortgage lenders exam.

On-line, or distance education courses may be accepted for continuing education if they comply with all of the provisions expressed above. In addition, on-line courses must have methods in place to determine whether a student has successfully completed a course, and to insure that only those students who have successfully completed a course are able to print a course completion certificate. In addition, an on-line course must allow a student who successfully completes a course to be able to print from the course provider's web site an acceptable continuing education certificate to submit to the Division.

Branch Offices

Effective 11/2/04 branch offices shall be registered with the Division prior to operation. To register the branch office, the control person of the entity must submit to the Division, on the forms required by the Division, the location of the branch office and the names of all licensees assigned to the branch, along with the fee for registering the branch.



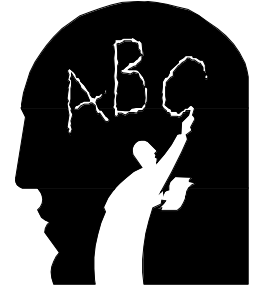
Branch application forms will be available at the Division, or from the Division's website after October 1, 2004.

Continuing Education

“The Things You Need To Know”

Part II

Proposed Administrative Rules



The following is a discussion of rules that have been proposed by the Utah Division of Real Estate, and The Utah Residential Mortgage Regulatory Commission. These Rules are in the State rule-making process and will likely formally go into effect on November 2, 2004. The Division will begin taking applications for Continuing Education Course Certification and Continuing Education Instructor Certifications on that same day (November 2, 2004). Forms will be available from the Division or the Division's web site after October 15, 2004.

Continuing Education Course Certification - Continuing education course providers are required to apply to the Division for certification for any course for which continuing education credit is promised. The application for certification shall include a non-refundable two-year course certification fee of \$70.00 per course. The application shall be on a form approved by the Division. The application shall include a copy of the course curriculum including a course outline of the comprehensive subject matter. The course outline shall include the length of time to be spent on each subject area broken into segments of no more than 30 minutes each, the instructor for each segment, and the teaching technique used in each segment. A complete description of all materials to be distributed to the participants shall also be included. A statement defining how the course will meet the objectives of continuing education, and how it will improve a licensee's ability to provide greater protection of, and service to, the public also needs to be included.

Continuing Education Instructor Certification – All instructors of courses to be taught for continuing education purposes must apply for certification from the Division not less than 60 days prior to the anticipated date of the first class that they intend to teach. The application shall be on a form approved by the Division. Instructors will be evaluated based upon their knowledge of the subject matter they intend to teach and their prior teaching experience. Proof of three

years of experience in the profession, or a bachelors or postgraduate degree in the field they intend to instruct; or any combination of three years full-time experience and college-level education in the courses they intend to instruct. A non-refundable instructor certification fee of \$50.00 will be charged per application. Continuing education instructor certifications shall expire twenty-four months after issuance.

On-Line Education - On-line, or distance education continuing education courses, are those courses not taking place in a traditional setting, but rather through other media where teacher and student are separated by distance and sometimes by time. The Division may approve these types of courses upon the submission of appropriate application.

Any licensee who renews online and certifies that the required continuing education has been completed shall maintain the original course completion certificates supporting that certification for two years following renewal. The licensee shall produce those certificates for audit upon request by the Division.

The Division anticipates that online license renewal will be available for licensees sometime this fall. Check out our website for upcoming details.

Limitation on Multiple Use of Credit Hours - A mortgage licensee who is also licensed by the Division as a real estate agent or broker, or real estate appraiser may not receive credit toward renewal of a mortgage license for continuing education hours that have already been used toward renewal of a real estate agent or broker, or real estate appraiser license.

Out of State Courses – Continuing education credit will be given for a course taken in another state provided the course

continued on page 5

Continuing Education, Part II

continued from page 4

has been certified for continuing education purposes by the licensing agency in the other state and the subject matter of the course relates to protection of the public, but not to state-specific licensing laws. Evidence must be retained by the licensee, and provided to the Division upon request, that the course was certified by the other state at the time the course was taken.

Those continuing education providers who have been certified for continuing education courses in a minimum of three other states and have specific standards in place for development of their courses and approval of their instructors, and who will provide those criteria to the Division for a one-time approval, may be granted certification of their courses with no further application.

On an individual basis, a licensee may apply for continuing education credit for any non-certified continuing education course if the licensee believes the course will improve his ability to better protect or serve the public, provided the course was taken from a nationwide education provider, and the course does not relate exclusively to the practice of the residential mortgage business in a state other than the state of Utah.

Exemption from Continuing Education Requirement - A licensee may obtain an exemption from the continuing education requirement for a period not to exceed four years upon a finding by the Division that there is reasonable

cause to grant the exemption. Exemptions from the continuing education requirement may be granted for reasons including military service, prolonged absence from Utah for religious or secular service, and extended or serious illness. A licensee seeking an exemption from the CE requirement shall apply to the Division for an exemption. An application for an exemption from the CE requirement shall set forth with specificity the reasons why the licensee is unable to complete the continuing education and the reasons why the licensee believes that an exemption would be reasonable. A licensee may not seek a retroactive exemption by applying for the exemption after the time period for renewal and reinstatement for a license has already passed.

Commencement of Continuing Education Certification - Beginning January 2, 2005 all continuing education courses and instructors must be certified with the Division in order to offer continuing education credit. Therefore providers need to submit their course and instructor applications (after November 2nd) for Division review and certification.

All continuing education certificates will need to include additional information after January 2, 2005. Completion certificates shall include the course title, date of the course, course certificate number (provided by the Division of Real Estate), and course certificate expiration date (also provided by the Division of Real Estate), as well as the student's name and license number.

Completing REPC Forms: a No-No

The Division often receives complaints that mortgage lenders, in an attempt to serve their customers, will "fill out" the Real Estate Purchase Contract (R.E.P.C.), or addenda for their borrowers. Despite the fact that mortgage lenders may be familiar with these documents, unless an individual is a licensed practicing attorney and/or real estate agent, they may not complete real estate purchase contracts or addenda for their clients. Completing contracts for others requires specific training and skills (i.e. law school, or real estate school). Both attorneys and real estate agents are specifically allowed by law to complete these documents. Mortgage lenders are not.

The Division encourages licensed mortgage lenders to recommend to their clients that they seek professional assistance from an attorney or real estate agent in completing the R.E.P.C. This also includes those borrowers who are not dealing with a real estate agent. Borrowers should be informed that they could complete the forms themselves, or seek assistance from an attorney. Mortgage lenders are also cautioned that they should not be "interpreting" or otherwise explaining the terms of the R.E.P.C. to sellers or borrowers for the same reasons. Mortgage lenders potentially subject themselves and their companies to legal liability when they perform services beyond their expertise and/or legal authority.

Important Exam and Licensing Rules to Remember

Make certain that you complete the entire licensing process within 90 days after successful completion of the exam. Administrative Rule R162-202.1.1 indicates that exam results are only valid for only 90 days. After the 90 days, the exam results shall lapse. An applicant:

“...shall (then) be required to retake and successfully pass the exam again in order to apply for a license.”

Administrative Rule R162-206.2 further declares that:

“Both portions of the examination must be passed within a six-month period of time.”

In summation, an applicant must pass both portions of the Utah Mortgage Lenders exam (general and state) within a six-month period of time. Licensees have only 90 days after their successful completion of both portions of the exam, to become licensed. Those who do not meet these requirements will be required to retake and pass the entire exam (both portions).

The Division strictly adheres to this timeline for licensing requirements. Exceptions will not be granted. Applicants need to plan accordingly in order to receive their mortgage lender license.

Did You Know?

The Utah Division of Real Estate is responsible for the licensing and regulation of real estate agents, brokers, appraisers, *and* mortgage lenders. Following are licensing statistics as of September 10, 2004:

- 13,015 Mortgage Lenders
- 1,930 Mortgage Entities
- 1,039 Appraisers
- 17,726 Real Estate Agents and Brokers
- 2,318 Real Estate Companies

More specific information is available from our licensee database online. See www.commerce.utah.gov/dre. License information such as license number, issue date, current status, expiration date, affiliation, etc. is available from the easy to manipulate Excel spreadsheets.

Unprofessional Conduct Act Expanded

Administrative Rule R162-205-1 was recently expanded to include additional acts by mortgage lenders.

Unprofessional conduct includes the following acts:

- A) conducting the business of residential mortgage lending under any name other than a name under which the entity or individual conducting such business is licensed with the Division;
- B) failing to remit to the appropriate third parties appraisal fees, inspection fees, credit reporting fees, insurance premiums, or similar fees which have been collected from a borrower;
- C) charging for services not actually performed;
- D) charging a borrower more for third party services than the actual cost of those services;
- E) filling out or altering any Real Estate Purchase Contract or other contract for the sale of real property, or any addenda thereto (see related article on page 5 of this newsletter); and
- F) making any alteration to any appraisal of real property.

New Legislation, New Changes

Senate Bill 178, passed by the legislature this 2004 session, made several changes to the law governing mortgage broker licensing and regulation. The Division became convinced over the last several years that mortgage fraud and generally poor practice by many mortgage lenders was at such a level that we needed to install a system of industry self-supervision – see the Principal Lending Manager position created below - and set higher qualifications to obtain a license. The bills provisions were worked out in numerous thoroughgoing meetings of the Division with representatives of the Utah Mortgage Lenders Association and the Utah Association of Mortgage Brokers. After lengthy discussion and debate, the bill emerged into its current form.

Specifically, the bill does the following, by category:

1. SUPERVISION:
 - A. Establishes a Principal Lending Manager (“PLM”) license (equivalent to a real estate or securities broker) beginning January 1, 2006. All mortgage officers must work under a PLM beginning January 1, 2006.
 - B. Requirements for a PLM license: 3 years mortgage experience, 40 hours pre-license education, and passage of the PLM exam, OR 5 years of Utah licensed lending experience and pass Utah law portion of exam. Applications for the PLM license can be made starting September 1, 2005.
2. MORTGAGE CONSUMER PROTECTION:

Prohibits:

 - A. Generating false documents
 - B. Withholding an appraiser’s fee to influence the valuation
 - C. Misleading advertising
 - D. Diversion of funds
 - E. Must give borrower appraisal copy 90 days after closing
3. CONSUMER REIMBURSEMENT: Replaces bonds with a Recovery/ Education Fund
 - A. Consumer must obtain a civil court judgment first
 - B. \$15,000 maximum per claim, \$45,000 maximum per licensee
 - C. \$100,000 minimum fund balance
 - D. Usable for education staff salaries and staff training
 - E. Maximum \$36 fee per individual, \$50 fee per entity
4. AFFILIATION INFORMATION:
 - A. A licensee who works for a regulated entity may not also work for an exempt entity
 - B. Exempt individuals who get a license submit to Division jurisdiction
5. LICENSURE:
 - A. Creates an “Inactive” status
 - B. Has companies give regulatory history for last 10 years, not just Control Person’s background
6. EDUCATION:
 - A. Requires 20 hours pre-licensing education for new individual licensees beginning January 1, 2005
 - B. Mortgage education to be available, where practical, by Internet or computer
 - C. Provides for Division regulation of mortgage schools and instructors
7. RECIPROCITY/NATIONAL LICENSE:

Grants licenses to those from other states with equivalent experience or who have passed an equivalent exam.



Use Of Change Cards

The Division recently enacted a rule that requires individuals licensed under the Utah Residential Mortgage Practices Act to notify the Division of status changes on the form required by the Division (Administrative Rule R162-203-1). This will enable the Division to accurately track the status changes of all licensees. After October 1, 2004, any modification in Division records regarding a licensee's status requires the use of these new change forms, with no exceptions.

Accordingly, the Division has prepared change cards (see front and back of form below). These cards are available on the Division website, or from the Division in hard copy (with limited supplies). The original form includes four copies. The copies are to be distributed as follows: Green: Division; Canary: Licensee; Pink: New Control Person; Goldenrod: Terminating Control Person. These copies are to be kept in each of the four parties records.

If you use the PDF fillable form from the website, please type the information in, print the form, sign, and make copies to distribute. The copy with the original signatures **must** be submitted to the Division. We encourage you to use the PDF fillable version from our website. From our homepage (www.commerce.utah.gov/dre) select Services, then Application Forms. However, you may call our office or stop by to receive a limited supply of change cards.

The change card must be signed and dated on both the "Change FROM" and the "Change TO" sides of the form. **The effective date for Division records is the date the correctly completed change card is received by the Division (not necessarily the signature dates on the change card).** Unsigned or incomplete change cards will not be processed, but will be returned to the applicant.

Appropriate boxes must be checked on both "Change From" and "Change To" sides of form

Utah mortgage lenders must use Mortgage change card (cannot use real estate change card)

Delivery or mailing address

State of Utah
DEPARTMENT OF COMMERCE
DIVISION OF REAL ESTATE
160 East 300 South
Box 146711
Salt Lake City, Utah 84114-6711

DIVISION OF REAL ESTATE
MORTGAGE CHANGE CARD

Print a copy of this form for each of the following entities:

- ☒ Division of Real Estate
- ☒ Licensee (You)
- ☒ New Control Person
- ☒ Terminating Control Person

Distribution of change cards

CHANGE FROM:

Current status as it presently exists

Name of Licensee _____

Licensee # _____

Address of Record (not a PO Box) _____

City _____ State _____ Zip _____

Phone (Home) _____ Phone (Work) _____

Name of Entity _____

Control Person _____

Signature of Control Person _____ Date _____

Signature of Licensee _____ Date _____

CHANGE TO:

Desired change to new status

Name of Licensee _____

Licensee # _____

Address of Record (not a PO Box) _____

City _____ State _____ Zip _____

Phone (Home) _____ Phone (Work) _____

Name of Entity _____

Control Person _____

Signature of Control Person _____ Date _____

Signature of Licensee _____ Date _____

Original signatures required

If unknown, license numbers can be found on Division website

continued on page 9

Use Of Change Cards

continued from page 8

The instructions for proper use of the form are contained on the back side of the form, and are included below:

The change card is to be used for five specific purposes:

1. Individual licensee change of address (no control person signature is required)
2. Transferring from one entity to another
3. Inactivating license
4. Activating from inactive status
5. Changing an entity name

*Five intended uses
of change card form*

INSTRUCTIONS

If you are using this CHANGE CARD for address change only, your control person's signature is not required.

Transferring From One Entity To Another

- a. Both the "old" control person from whom you are transferring and you (the individual mortgage lender) must sign and date the **left side** of the CHANGE CARD.
 - b. The "old" control person from whom you are transferring retains a copy of this card for his/her records.
 - c. The "old" control person must return your wall license.
 - d. Both the "new" control person to whom you are transferring and you (the individual mortgage lender) must sign and date the **right side** of the CHANGE CARD.
 - e. The "new" control person retains a copy of the CHANGE CARD for his/her records.
 - f. The "new" control person takes possession of and retains your wall license.
 - g. Mail or deliver the primary copy of this CHANGE CARD to the Division of Real Estate within **five working days**. Retain a copy for your records.
 - h. The official date of the change is the date the completed change card (plus fees and other requirements, if any) is received at the Division.
- It is mandatory that the Division receive the original signed copy – no faxes or photocopies.**

Inactivating: Complete a., b., and c. above. In addition:

- i. Sign and date the right side of the CHANGE CARD and check the "inactive" box.
- j. Mail or deliver the original, signed copy of this CHANGE CARD to the Division of Real Estate within **five working days**. Your license will then be maintained on our files as "inactive" until you again activate. Retain a copy of this form for your records.
- k. Be sure to keep your wall license in a safe place until you "activate" or until you renew, because you will need to give it to your new control person.

Activating from Inactive Status: Complete d., e., g., and h. In addition:

- m. Submit appropriate fee.
- n. Take your wall license to your new control person.

Changing an Entity Name

- o. Documents showing that the entity name has been changed with the Utah Division of Corporations are required in order to change the entity name with the Real Estate Division.

IF THE CONTROL PERSON OR INDIVIDUAL MORTGAGE LENDER IS NOT AVAILABLE TO PROPERLY EXECUTE THIS CHANGE CARD THE CHANGE MAY STILL BE MADE PROVIDED A CERTIFIED LETTER ADVISING OF THE CHANGE IS MAILED TO THE LAST KNOWN ADDRESS OF THE UNAVAILABLE LICENSEE. A COPY OF THE LETTER MUST BE ATTACHED TO THE CHANGE CARD ALONG WITH A COPY OF THE STAMPED CERTIFIED POSTAL RECEIPT WHEN IT IS SUBMITTED TO THE DIVISION OF REAL ESTATE.

Information describing how either an entity or individual licensee may properly execute a change card when a licensee is "unavailable" for signature.

This Month in History **OCTOBER**

10 YEARS AGO

1994 (Oct. 3) Gary Larson announces his retirement from drawing the "Far Side" comic strip.

20 YEARS AGO

1984 (Oct. 16) South African prelate Desmond Tutu wins the Nobel Peace Prize.

30 YEARS AGO

1974 (Oct. 3) Frank Robinson is hired by the Cleveland Indians as baseball's first African American major league manager.

40 YEARS AGO

1964 (Oct. 14) Martin Luther King Jr. becomes the youngest recipient of the Nobel Peace Prize.

50 YEARS AGO

1954 (Oct. 30) The Defense Department announces elimination of segregation.

75 YEARS AGO

1929 (Oct. 29) Black Tuesday - the stock market crashes. The Great Depression follows.

100 YEARS AGO

1904 (Oct. 27) The NYC subway begins operating, running from City Hall to West 145th Street.

Minimum Age Requirement

The Division recently enacted an Administrative Rule (R162-202.5.3) that requires all applicants for a mortgage lender license to be at least 18 years old.



Mortgage Disciplinary Sanctions

AMERICAN RESIDENTIAL HOME LOAN LLC, Licensed Mortgage Entity, Bountiful. License renewal issued on June 14, 2004 on probation until the first renewal because of a plea in abeyance to a criminal charge by its control person, Chad Spencer Reynolds.

BENNION, MERVYN S., St. George. Mortgage officer license issued on June 2, 2004 on a restricted status because of factors including a criminal history. The license was placed on probation subject to his timely payment of his unpaid fines in pending criminal matters. The license is to remain on probation until first renewal.

CALUSA INVESTMENTS, LLC, Chantilly, VA. Agreed to pay a \$5,000 fine and cause to be licensed those loan officers that will operate to originate loans in the state of Utah. Calusa Investments, LLC obtained a Utah entity license on January 3, 2002. At least 47 loans in the state of Utah were closed after January 3, 2002, but none of the 24 individual loan officers employed by Calusa Investments, LLC were licensed as mortgage officers in Utah. #MG19295.

CALUSA INVESTMENTS LLC, Licensed Mortgage Entity, Chantilly, VA. License renewal issued on May 20, 2004 on a restricted status because of a license denial by the Commonwealth of Virginia and an action taken by the Maryland Commissioner of Financial Regulation. The license was immediately suspended until such time as at least one individual who holds a Utah license had affiliated with Calusa Investments LLC.

CRAMER, PAUL, Mortgage Officer, Sandy. Agreed to pay a \$400 fine for engaging in misleading advertising that the public may have interpreted to mean that he was representing the seller in a transaction and acting as a real estate agent. Mr. Cramer assisted two sellers in the marketing of their properties with a program he called "One Week Home Sale." This program included an initial bidding process followed by a negotiation process for the purchase of the home. Mr. Cramer advertised the properties for sale using advertising materials that included his name, phone number, and mortgage company name. Included in the advertising was information that is customarily provided by real estate agents, including price, school information, square footage, a list of features of the home, and the statement, "Square footage and information deemed to be reliable, but buyer is to verify." #MG19872

DOJAQUEZ, KIMBERLY, Mortgage Officer, Prestige Mortgage, L.C., Heber City. Agreed to pay a \$1,000 fine and that her license

will be on probation until her next renewal for failing to disclose on her initial application for registration as a mortgage officer the fact that she had previously surrendered her Utah real estate license. In settlement of Case RE99-02-22, Ms. Dojaquez originally agreed to pay a \$500 fine, complete education and have her real estate sales agent license placed on probation. After the stipulation was agreed upon, Ms. Dojaquez did not have the funds to pay the fine and decided that she no longer wanted to practice as a real estate agent. The stipulation was thereafter modified and Ms. Dojaquez surrendered her real estate sales agent license in lieu of the other sanctions previously agreed upon. Ms. Dojaquez maintains that in mitigation she must have misread the application, and that she did not have any intention to mislead the Division on her mortgage officer application. #MG18125.

FLOWERS, CHERYL Y., Sandy. Mortgage officer registration issued on January 7, 2004 but the registration was immediately suspended until she had paid all fines, completed all community service, and successfully completed her court ordered probation in a criminal case.

HEAPS, DAVID A., Midvale. Mortgage officer license issued on March 16, 2004 on a restricted status because of factors including a criminal history. The license was immediately suspended until such time as all outstanding obligations assessed in the criminal matter were paid. Following the suspension, the license is to remain on probation until first renewal.

HESTER, MARGOR., Murray. Mortgage officer registration issued on August 20, 2003 but placed on probation until first renewal because of a criminal conviction for which she was off probation.

HIDDEN VALLEY MORTGAGE LLC and its Control Person AARON HARDY, Salt Lake City. License renewals issued on August 25, 2003 but the registrations were placed on probation until the next renewal because of Aaron Hardy's misdemeanor conviction and a plea in abeyance to another criminal charge, and his failure to notify the Division of the plea and conviction.

HOUSTON, JAMES, Midvale. Mortgage officer registration granted September 15, 2003 on probation until first renewal because of factors including a criminal history.

KENWORTHY, HEATHER MORSE, South Jordan. Mortgage officer registration issued on July 10, 2003 on probation until first renewal because of a criminal conviction for which she was off probation.

KIMBALL, KRIS A., Sandy. Mortgage officer registration issued on February 20, 2003 on probation until first renewal because of factors including a criminal history.

MC CARTY, JAMES R., Murray. Mortgage officer license issued on March 11, 2004 on a restricted status because of a plea in abeyance in a criminal case. The license was immediately suspended until all fines are paid in the criminal case. Following the suspension, the license was to remain on probation until first renewal.

MILES, BRAD R., Hooper. Mortgage officer registration issued on November 25, 2003 but placed on probation until first renewal because of a disciplinary proceeding against him by the National Association of Securities Dealers and a denial by the Utah Insurance Department of his application for renewal of his insurance license.

NANCE, COREY D., Sandy. Mortgage officer renewal granted on April 7, 2003, on probation until next renewal because of factors including a criminal conviction.

OLSEN, JORGEN P., Mortgage Officer and Control Person, and JPM FINANCIAL SERVICES, Mortgage Entity, Salt Lake City. In a May 17, 2004 order, because of factors including the arrest of Mr. Olsen in a criminal matter, the decision on applications for renewal was continued pending resolution of the criminal case. The licenses were temporarily renewed pending the resolution of the criminal case. If the arrest resulted in a conviction or a plea agreement, then the applications for renewal were to be granted but placed on probation until the next renewal. If the criminal charge was dismissed, the applications were to be granted.

PARK CAPITOL MORTGAGE, LLC, Salt Lake City. Application for renewal denied because its manager Gavin Ekstrom failed to meet the statutory criteria of good moral character and the competency to transact the business of residential mortgage loans. Mr. Ekstrom submitted to a lender, or permitted Park Capitol Mortgage, LLC to submit to a lender, documents that materially misrepresented the qualifications of a borrower, namely false business licenses, altered checking account bank statements, and one or more false loan applications. Park Capitol Mortgage, LLC either participated in creating the false documents or accepted the false documents from the party from whom the borrower had contracted to purchase the property, instead of obtaining the documents directly from legitimate, reliable sources. In addition, Park Capitol Mortgage, LLC, through Gavin Ekstrom, provided the funds necessary to close in the amount of \$6,626.45 to the borrower.

PEARCE, MARK, formerly the Control Person for Platinum Mortgage LLC, Draper. Agreed that he would surrender his right to renew his license when it expired on February 29, 2004 and that he will not apply for a new license for a minimum of three years. Complaints were filed with the Division alleging that Mr. Pearce altered documents in loan files. Mr. Pearce neither

admitted nor denied the allegations, but agreed to the above sanction in settlement of Case MG17636.

PLAZAS, CARLOS E., West Jordan. Mortgage officer license issued on January 2, 2004 on probation until the first renewal because of factors including a criminal conviction and failure to stay current on his child support obligation.

PUENTE, JACKIE, Ogden. Mortgage officer registration issued on May 18, 2004 on a restricted status because of factors including a criminal history. The license was immediately suspended until such time as all fines in the criminal matter are paid. Following the suspension, the license is to remain on probation until the first renewal.

ROSALES, ARTURO, Salt Lake City. Mortgage officer registration granted October 3, 2003 on probation until first renewal because of factors including a criminal conviction.

SMITH, LOWELL DENE, Salt Lake City. Mortgage officer registration issued on August 21, 2003 but placed on probation until first renewal because of factors including a criminal history.

TAYLOR, J. ROBERT, Salt Lake City. Mortgage officer registration granted December 17, 2003 on probation until the first renewal because of factors including a criminal conviction.

TRUITT, BRIAN LAWRENCE, South Jordan. Mortgage officer registration approved on April 1, 2003, to be issued once he provided proof that he had completed court-ordered counseling and been released from criminal probation. Once the registration was issued, it was to remain on probation until first renewal, because of factors including a criminal conviction.

VAN DYKE, RICHARD and K&R MORTGAGE SERVICES INC., Alpine. Licenses surrendered effective June 2, 2004 rather than continue to respond to the Division's investigation of complaints filed against them in cases MG19505 and MG30403.

"You'll never learn anything if all you say is 'I don't know,' without following it up with, 'but I can find out.'"
~Marsha Biggar

Real Estate Disciplinary Sanctions



BEINS, STUART D., Tremonton. Sales agent license renewed on May 27, 2004 on probation until next renewal because of factors including entering into a diversion agreement to a criminal charge. During probation, broker acknowledgment of probation is required for affiliation with any broker.

BOYLE, REBECCA, Sales Agent, formerly a sales agent with C-21 At the Rockies, American Fork. Agreed to pay a \$1,500 fine and complete the Division of Real Estate Trust Account Seminar and an ethics class. The Division alleged that Ms. Boyle: 1) acted as an agent for buyers before she had obtained informed, written consent from the sellers that she could act in that capacity; 2) breached her fiduciary duty to her sellers by structuring a transaction in which the buyers rented the sellers' home although the sellers' loan required owner occupancy; and 3) violated Utah Code Ann. §61-2-11(8) by structuring a transaction in which she and her husband offered a gift of \$400 per month to the sellers to make the transaction work, and then, after the failure of the transaction, they asserted a claim for reimbursement of the gifted funds against money on deposit in the brokerage trust that belonged to the sellers. Ms. Boyle neither admitted nor denied the violations but agreed to the sanctions in settlement of the complaint. #RE20-01-25.

BOYLE, KENNETH, Principal Broker, formerly an Associate Broker with C-21 At the Rockies, American Fork. Agreed to pay a \$1,500 fine and complete the Division of Real Estate Trust Account Seminar and an ethics class. The Division alleged that Mr. Boyle: 1) acted as an agent for buyers before he had obtained informed, written consent from the sellers that he could act in that capacity; 2) breached his fiduciary duty to his sellers by structuring a transaction in which the buyers rented the sellers'

home although the sellers' loan required owner occupancy; and 3) violated Utah Code Ann. §61-2-11(8) by structuring a transaction in which he and his wife offered a gift of \$400 per month to the sellers to make the transaction work, and then, after the failure of the transaction, they asserted a claim for reimbursement of the gifted funds against money on deposit in the brokerage trust that belonged to the sellers. Mr. Boyle neither admitted nor denied the violations but agreed to the sanctions in settlement of the complaint. #RE20-01-24.

BUTLER, THOMAS B., Principal Broker, Butler Real Estate Co., Salt Lake City. Agreed to pay a \$500 fine because of violation of Utah Code Section 61-2-11(15) by failing to use State-approved forms for a transaction. A buyer agreed to purchase a one-half interest in a condo owned by Mr. Butler. No REPC was signed, no settlement was conducted, and no deed was signed conveying a one-half interest to the buyer. In exchange for \$20,000 and an agreement to assume half of the expenses on the property, the buyer received a "Purchase Receipt." A dispute later developed over the purchase and the buyer complained to the Division. Mr. Butler thereafter refunded the \$20,000, less an amount deducted for half the expenses on the condo. Mr. Butler maintained that in mitigation he had wanted to rent the condo to the buyer, not sell it, but that although she was anxious to find housing, she did not want to rent and could not qualify to buy, so he decided to sell her half of the equity in the condo and allow her to reside there. #RE17629.

CLEMENTS, JOHN W., JR., Salt Lake City. Sales agent license issued June 10, 2003 on probation until first renewal because of factors including a criminal history. During probation, broker acknowledgment of probation is required for affiliation with any broker.

CLIFFORD, KENNETH L., Associate Broker, and **CLIFFORD, COLLEEN E.**, Sales Agent, both formerly with Impression Group Real Estate, Inc., Salt Lake City. Mr. and Mrs. Clifford both agreed to a 2-year suspension of their licenses beginning September 1, 2004 because of violation of Administrative Rule R162-6.1.1, which prohibits participating in a transaction in which any document, agreement, closing statement or any other device or scheme is used that does not reflect the true terms of the transaction. Mr. and Mrs. Clifford acted as licensees in real estate transactions in which Carolyn Ethridge, as attorney in fact for Debra Rasmussen or as a corporate officer of various entities, purchased several homes in the same neighborhood that had been part of the 1999 Salt Lake Parade of Homes. In one transaction involving a home the Cliffords had listed for approximately \$500,000, the Real Estate Purchase Contract they presented to their seller reflected a \$750,000 sales price. The terms of the offer were a \$1.00 earnest money deposit, a \$525,000 sub-prime loan, and \$225,000 in seller financing. The seller financing was not actually to be paid to the seller but was a device used by the buyer to obtain financing. When the transaction closed, the seller received \$500,000 in gross proceeds but later received a Form 1099-S from the title company that showed his gross proceeds as \$750,000. In a second transaction, the Cliffords presented a similar \$750,000 offer from the same buyer on a home listed for \$579,000. The seller's agent objected to the offer and withdrew from the transaction, and the seller rejected the offer. In a third transaction, the Cliffords presented a similar \$750,000 offer from the same buyer on a home that had never been listed above \$450,000. The seller's agent advised the seller to reject the offer and the seller did reject the offer. The buyer later purchased that property directly from the seller without assistance from

the Cliffords. The Cliffords assisted the same buyer in a fourth and a fifth transaction in which the buyer offered a \$1.00 earnest money deposit and the balance of \$448,999.00 and \$439,929.34 respectively were to be brought to closing. The payments on the loans on all of the homes purchased by this buyer went into default shortly after closing and the homes were foreclosed and later sold at substantially less than their original prices. The Cliffords maintained that in mitigation, among other things, the majority of their home sales prior to 1999 had been homes under \$200,000, they had attended classes in which they had been encouraged to use "creative financing", they had no knowledge that Carolyn Ethridge intended to borrow more on any of the properties than the amount necessary to purchase the properties, and they relied on other professionals in one of the transactions, including the seller's attorney, the appraiser who appraised the property, and the mortgage broker. #RE20-01-01, RE01-11-20.

COCHRANE, RANDY, Sandy. Sales agent license renewed on October 10, 2003 until next renewal because of factors including a plea in abeyance to a criminal charge that occurred while his sales agent's license was on probation.

DALTON, MARK R., Midvale. Sales agent license renewed on June 24, 2004 on probation until first renewal because of factors including a criminal history. During probation, broker acknowledgment of probation is required for affiliation with any broker.

DeLAY, BABS, Continuing Education Instructor, Salt Lake City. Application for a new instructor certification issued March 9, 2004 on probation because she failed to track continuing education certification expiration dates when previously certified, minimized the gravity of her actions, and appeared to disregard rules regarding continuing education certification.

ENCE, CODY, St. George. Sales agent license issued May 17, 2004 on probation until first renewal because of factors including a criminal conviction. During probation, broker acknowledgment of probation is required for affiliation with any broker.

GLASMANN, JASON J., Ogden. Sales agent license issued October 7, 2003 on probation until first renewal because of factors including a criminal history. During probation, broker acknowledgment of probation is required for affiliation with any broker.

HOLT, LEE R., Broker, Roy. Broker license renewed on June 23, 2004 until next renewal because of factors including a criminal conviction.

JACKSON, BILLY J., Salt Lake City. Sales agent license issued January 9, 2004 on probation until first renewal because of factors including a criminal history. Broker acknowledgment

of probation is required for affiliation with any broker.

JACKSON, JUDY G., Inactive Sales Agent, Orem, formerly with Allpro Realty Group, Inc. Agreed to pay a \$200 fine and complete a real estate ethics course because of unprofessional conduct in a transaction. While acting as buyers' agent, Ms. Jackson took the key from a keybox and gave it to her buyers so that they could make a copy to access the home to show it to a party who had agreed to co-sign with them on a loan to purchase the home. The sellers discovered the prospective buyers in the home and found that the prospective buyers had done substantial work on the home. No REPC had been signed, and the sellers and the prospective buyers never came to agreement on terms for a purchase of the property. Ms. Jackson maintains that in mitigation: 1) she only gave the key to the prospective buyers because she had critical family matters to attend to and had not been able to contact the listing agent for help in showing the property; and 2) the home was not damaged as the sellers claimed, but was actually improved by the prospective buyers' efforts. #RE19178.

JARVIS, MICHAEL W., Salt Lake City. Sales agent license issued December 1, 2003 on probation until first renewal because of factors including a criminal history, and failure to report a conviction to the Division when previously licensed. During probation, broker acknowledgment of probation is required for affiliation with any broker.

KIFER, MERVIN "ANDY", Broker, Salt Lake City. Broker license renewed on July 7, 2004 on probation because of factors including a criminal conviction. During probation, broker acknowledgment of probation is required for affiliation with any broker.

LEATHERS, MIKE D., West Jordan. Sales agent license issued November 21, 2003 on probation until the first renewal because of factors including a criminal history. During probation, broker acknowledgment of probation is required for affiliation with any broker.

LLOYD, JOANN., Sales Agent, formerly with Coldwell Banker Residential Brokerage, Main Office, Midvale. Agreed to pay a \$500 fine and complete an ethics course. Ms. Lloyd sold a home that she owned and in which she lived, and did not take reasonable efforts to verify the accuracy and content of the listing. #RE03-06-11.

McCULLOCH, DAVID, Ogden. Sales agent license issued June 24, 2004, but immediately suspended because of factors including a criminal conviction. The suspension was to be in place until all fines were paid and he was released from probation in the criminal case. After the suspension, his license will be on probation until first renewal. Broker acknowledgment

continued on page 14

R.E. Disciplinary Sanctions

continued from page 13

of probation is required for affiliation with any broker.

MORGAN, KENT, Salt Lake City. Sales agent license issued December 12, 2003 on probation until first renewal because of factors including a criminal history. During probation, he must complete payment of his criminal fines and provide broker acknowledgment of probation for affiliation with any broker.

MUSCOLINO, LORIK., St. George. Sales agent license issued May 11, 2004 on probation until first renewal because of factors including a criminal history, but the license was suspended until she attended the Division of Real Estate Trust Account Seminar. Following the suspension, her license will be on probation until first renewal. During probation, broker acknowledgment of probation is required for affiliation with any broker.

POULTON, BOYD R., Principal Broker, NAI Utah Real Estate, Provo. Agreed to pay a \$2,000 fine, have his license on probationary status for six months from June 16, 2004, and complete an ethics course because of: a) representing a brokerage other than the one with which he was licensed; and b) receiving commission directly from a principal broker other than the principal broker with whom he was licensed. In 1996, Mr. Poulton, who was a licensed Idaho broker and who had in the past been licensed in Utah, obtained a new Utah sales agent license. In early 1997, he acted as a buyers' agent for Idaho buyers of a Utah business park. Mr. Poulton's Utah broker maintains that Mr. Poulton did not inform him of the pending transaction. When the commission was paid on the transaction, the commission was paid to Mr. Poulton directly and he thereafter paid a share to his Utah principal broker. In addition, Mr. Poulton listed two Utah properties through his Idaho company and did not inform his Utah principal broker about the listings. #RE97-07-16.

PROVOST, MARK W., Murray. Sales agent license issued June 10, 2004 on probation until first renewal because of factors including a criminal history. During probation, broker acknowledgment of probation is required for affiliation with any broker.

PULLEN, BRIAN D., Park City. Sales agent license issued May 4, 2004 on probation until first renewal because of factors including a criminal history. During probation, broker acknowledgment of probation is required for affiliation with any broker.

RIVERA, RICHARD R., Kearns. Sales agent license renewed October 2, 2003 on probation until his next renewal because of factors including a plea in abeyance to a criminal charge. During

probation, broker acknowledgment of probation is required for affiliation with any broker.

ROBISON, JORDAN P., South Jordan. Sales agent license issued on September 2, 2003 on probation until first renewal because of factors including a criminal history. During probation, broker acknowledgment of probation is required for affiliation with any broker.

RYAN, MICHAEL S., Salt Lake City. Sales agent license issued December 9, 2003 on probation until first renewal because of factors including a criminal history. During probation, broker acknowledgment of probation is required for affiliation with any broker.

SATROM, TREVOR J., Salt Lake City. Sales agent license issued March 15, 2004, but the license was suspended until he proved to the Division that he had been released from court proceedings in connection with a plea in abeyance to a criminal charge. His license, once activated, shall be on probation for the balance of the initial licensing term. During probation, broker acknowledgment of probation is required for affiliation with any broker.

SCHAERRER, CADE, Pleasant Grove. Sales agent license issued April 17, 2004 on probation because of factors including a criminal conviction, but immediately suspended until criminal probation is terminated, then to be on probation until the first renewal. During suspension and probation, broker acknowledgment of suspension and probation is required for affiliation with any broker.

SORENSEN, BRETT R., Syracuse. Sales agent license renewed on probation on February 10, 2004 because of factors including a criminal conviction, but his license was suspended until he paid all fines owed in the criminal case. After the suspension, his license will be on probation until his next renewal. During probation, broker acknowledgment of probation is required for affiliation with any broker.

WALLACE, STEVEN R., Tooele. Sales agent license issued on March 31, 2004 on probation until the first renewal because of factors including a plea in abeyance to a criminal charge. During probation, broker acknowledgment of probation is required for affiliation with any broker.

WISDEN, KRYSTIN A., Salt Lake City. Sales agent license issued April 8, 2004 on probation until first renewal because of factors including a criminal history. During probation, broker acknowledgment of probation is required for affiliation with any broker.

YOUNGBLOOD, ROBERT L. Sales agent license renewed on probation on August 2, 2004 because the Division of

Occupational and Professional Licensing (DOPL) took action against his license to practice medicine and to prescribe controlled substances. His real estate license will be on probation until his probation with DOPL is over. During probation, broker acknowledgment of probation is required for affiliation with any broker.

ZUNDEL, ROGER B., Principal Broker, C-21 At the Rockies, American Fork. Agreed to pay a \$1,000 fine and complete the Division of Real Estate Trust Account Seminar and an ethics class. The Division alleged that Mr. Zundel failed to supervise two sales agents licensed with his brokerage by: 1) failing to prevent them from using an "Interim Occupancy Agreement" which was not authorized by Utah Code Ann. §61-2-20 for use by sales agents; and 2) allowing them to pursue their claim of entitlement to the buyers' forfeited earnest money directly instead of through him. Mr. Zundel neither admitted nor denied the violations but agreed to the sanctions in settlement of the complaint. #RE20-01-23.

misleading. Mr. Boggess used one square footage figure in the cost section of his report and a larger square footage figure in the sales analysis section of the report, both of which square footage figures were larger than shown on County records. Mr. Boggess maintained that in mitigation his original calculation of square footage was done from plans and specifications, but admits that he did not revise the square footage figures in the second appraisal that he did for permanent financing once he had inspected the home to certify that it had been completed. #AP02-11-01.

CHARLESWORTH, TYLER, State-Certified Residential Appraiser, Roy. Agreed to pay a \$1,500 fine and complete the 2004 USPAP Update Course for violating USPAP Standards Rule 1-1 by failing to employ recognized methods and techniques, USPAP Standards Rule 1-1(b) by commission of a series of errors that significantly affected the appraisal, and USPAP Standards Rule 1-5(b) by failing to analyze a prior sale of the property. The appraisal report in question did not disclose that the lot was a non-conforming lot, that there was no vehicular access over the property, or that only on-street parking was available for the property. The report did not show the correct owner of record at the time of the appraisal. In addition, the report indicated that the condition of the property was average, but the selling agent reported that it was in sub-standard condition and needed substantial repair. #AP02-05-08.

Appraiser Disciplinary Sanctions



BITTON, CHRISTIAN E., State-Certified Residential Appraiser, Salt Lake City. Agreed to pay a \$2,000 fine because of violation of USPAP. In one appraisal, Mr. Bitton failed to analyze the current listing of the subject property, failed to check county records to determine the record owner of the subject property, and failed to give due consideration to the prior sales and listing history on the subject property. In a second case, Mr. Bitton did not check county records to determine the ownership of the subject property. If he had checked county records in connection with that appraisal, he would have discovered that the seller had only recently obtained title to the property and he could have inquired into the price at which the seller had purchased the property. Mr. Bitton maintained that in mitigation he was never informed by anyone that he should check county records on the subject property when doing an appraisal. #AP02-05-07, AP02-10-30.

BOGGESS, LARS L., State-Certified Residential Appraiser, Salt Lake City. Agreed to pay a \$1,500 fine for violating USPAP by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affect the credibility of the results, and by failing to clearly and accurately set forth the appraisal in a manner that is not

LUTZ, DAVID M., State-Certified Residential Appraiser, South Jordan. Agreed to, among other things: surrender his appraiser certification effective March 24, 2004 and be issued a State License in its place; that he may not sit for the examination for a new appraiser certification for at least two years following the surrender of his certification; that he will not supervise or sign for any other person for two years; and that he will pay a \$4,500 fine. In a stipulation settling eleven complaints against Mr. Lutz, he admitted violating USPAP by committing substantial errors of omission or commission, failing to set forth appraisals in a manner that will not be misleading, failing to analyze all agreements of sale current as of the effective date of the appraisal, failing to analyze the listing history of the subject property, failing to maintain records to support his conclusions, failing to use such comparable cost data as are available to estimate the cost new of the improvement, and violating Utah Administrative Code Section R162-107.1.6, which prohibits splitting appraisal fees with a person who is not a licensed or certified appraiser in Utah. #AP99-04-46, AP99-09-12, AP20-05-10, AP20-08-18, AP01-10-27, AP02-04-05, AP02-05-11, AP02-11-12, AP02-12-09, AP03-04-04, and AP03-08-18.

OLSEN, RIC, State-Certified Residential Appraiser, Salt Lake City. Agreed to pay a \$1,500 fine and purchase the Appraisal Foundation book, "The Appraisal of Real Estate" for violating USPAP in two appraisals. In one appraisal, the report stated

continued on page 16

Appraiser Disciplinary Sanctions

continued from page 15

that the home had been listed in the past year for \$310,000, but at the time the report was signed, the home was listed for \$230,000. The borrower's purchase contract with the seller showed a \$300,000 purchase price with a \$60,000 "equity gift" from the seller, but the appraisal report did not address the equity gift. In the other appraisal, Mr. Olsen admitted that he missed the listing information in the Multiple Listing Service on the subject property but asserts that he has now taken a class on how to more efficiently search the Multiple Listing Service data. #AP03-08-08, AP03-11-09.

WHETTON, CAROLYN S., State-Certified Residential Appraiser, Ogden. Agreed to pay a \$1,500 fine and complete

a course on the appraisal of small residential income properties for violating USPAP in two appraisals. Ms. Whetton also agreed that she will not accept any assignments dealing with the appraisal of small residential income properties until she has completed the course in appraising such properties. In one appraisal, Ms. Whetton failed to report or analyze the current listing of the subject property, had no documentation in her file to support the replacement cost figures she used, and made several errors in the report. In the second appraisal, the report stated that the property had not been listed for sale in the past 36 months although the property was currently listed for sale. In addition, the report stated that the transaction was a refinance when the appraisal was actually done for the buyer's purchase money financing. #AP02-08-08, AP03-08-26.

Utah Mortgage Lender Exam Content Areas

I. General Mortgage Industry Knowledge

- A. Mortgage categories
 - 1. Conventional/conforming
 - 2. Government (FHA, VA)
 - 3. Jumbo/non-conforming
 - 4. Sub-prime
 - 5. Niche
 - 6. Second mortgage
 - 7. Construction
- B. Mortgage products
 - 1. Fixed rate
 - 2. Variable rate/ARMs
 - 3. Balloons
- C. Retail product pricing
 - 1. Service release premium (SRP)
 - 2. Yield spread premiums (YSP)
 - 3. Lender fees
 - 4. Price adjustments (incl. discounts)
- D. Financial calculations
 - 1. Payment
 - 2. Interest rate
 - 3. Closing costs
 - 4. Other

E. Primary and secondary markets

- 1. Primary
- 2. Secondary
 - a. Fannie Mae
 - b. Freddie Mac
 - c. Ginnie Mae

F. Other general mortgage matters

II. Mortgage-Related Professional Practices

- A. General real estate law and terms
 - 1. Real estate purchase contracts
 - 2. Real estate ownership and restrictions
 - a. Types of ownership (joint tenants, tenancy in common, etc.)
 - b. Liens and other restrictions
- B. Appraisals
 - 1. Approaches to valuation
 - a. Cost
 - b. Income

c. Market

C. Insurance

- 1. Hazard and related insurance
- 2. Mortgage insurance
 - a. Coverage
 - b. Fannie/Freddie/FHA/VA requirements
 - c. Lender paid
 - d. Removing mortgage insurance
- 3. Title and title insurance

III. Federal Mortgage-Related Law and Regulatory Compliance

- A. RESPA (Real Estate Settlement Procedures Act) and Regulation X
 - 1. Good Faith
 - 2. HUD-1
 - 3. Settlement cost booklet
 - 4. Notice of transfer of servicing
 - 5. Aggregate escrow analysis
 - 6. Kickbacks and referral

fees

7. Exempt transactions
8. Terms defined in RESPA
9. Settlement services
10. Penalties

B. Truth in Lending Act (i.e., Regulation Z, APR, definitions)

1. Advertising
2. Disclosure
3. Notice of right to cancel
4. HOEPA

C. Fair lending laws

1. Fair Housing Act
2. Equal Credit Opportunity Act
3. Home Mortgage Disclosure Act
4. Fair Credit Reporting Act

D. Agencies related to mortgage lending

1. Fannie Mae
2. Freddie Mac
3. Ginnie Mae
4. Federal Trade Commission
5. Department of HUD
6. Department of Veterans' Affairs

E. Identification and consequences of fraud

IV. Residential Mortgage Lending Practice

A. Qualifying process

B. Applications

1. Uniform Residential Loan Application
2. Disclosure documents (i.e., GFE, TIL, ECOA)

C. Assembling, verifying and evaluating applicant information

1. Financial statements and tax returns
2. Credit history and credit scoring
3. Income
4. Expenses and ratios
5. Property
6. Types of acceptable assets

D. Underwriting and program guidelines

1. FHA
2. VA
3. Fannie Mae, Freddie Mac
4. Other

E. Relationship with clients

1. Lock-in and float agreements
2. Prepayment penalties

3. Handling client funds

4. Adverse action procedures

5. Legal implications of giving tax and real estate advice

F. Closing process and documents

1. Closing conditions and funding conditions
2. Borrower review of closing
3. Uniform Settlement Statement (HUD-1)
4. Note, trust deed, and applicable riders
5. TIL Federal Box Form
6. Compliance documents

G. Post-closing issues

1. Repurchasing/buy-back
2. Compliance
3. Early default
4. Premium recovery
5. Foreclosure

V. Utah Statutes and Regulations Governing the Mortgage Business

A. Statutes

1. Utah Residential Mortgage Practices Act: 61-2c-101 through 61-2c-403
2. Utah Mortgage Lending and Servicing Act: 70D-1-6 Fee Restrictions

B. Rules

1. Residential Mortgage Administrative Rules: R162-202 through R162-209



Predatory Lending: Buyer Beware

by Ed Oneto

(Ed Oneto has been in sales and real estate finance for 40 years. For the last 10 years, he has been with Wells Fargo where he currently holds the position of assistant vice-president of the mortgage division in New Orleans, LA. Training agents on how to use finance as a sales tool is one of his specialties.)

A relatively new term, *predatory lending*, refers to mortgages that are particularly burdensome to borrowers because they are unaware of hidden and abusive costs as well as alternative sources of finance. According to Federal Reserve Board Governor Edward M. Gramlich, this lending practice typically has some or all of the following characteristics:

- Making unaffordable loans based on the assets of the borrower rather than on the borrower's ability to repay an obligation
 - Inducing a borrower to refinance a loan repeatedly in order to charge high points and fees each time the loan is refinanced; and/or
 - Engaging in fraud or deception to conceal the true nature of the loan obligation from an unsuspecting or unsophisticated borrower.
- (Cleveland State University, Cleveland, Ohio, March 23, 2001)

Predatory lending has become a hot topic in the real estate industry because of low interest rates and more lending activity in our industry. More first time home buyers are

purchasing and, perhaps because of their inexperience, are more subject to predatory lending than someone who purchased before. Females, the elderly and minorities are particular targets of predatory lending.

According to the Mortgage Brokers Association (MBA), conventional home-purchase mortgage lending to low-income borrowers nearly doubled between 1993 and 1999 whereas that to upper-income borrowers rose 56%. Also over the same period, conventional mortgage lending increased by about 120% to African-American and Hispanic borrowers, compared with an increase of 48% to white borrowers. The number of sub-prime (less-than-perfect credit borrowers) home equity loans has increased 1,300%. In addition, buyers sometimes do not use real estate professionals to assist in their purchase and are trying to complete the transaction on their own using the Internet. New lending companies pop up all the time.

In 2000, Congress passed legislation that cracked down on unfair lending practices. A number of other federal bills and amendments to existing legislation are now in progress to eliminate predatory lending (see www.mbaa.org/resources/prelend/). In addition, many state governments have recently passed laws to prevent predatory lending. For example, Illinois approved House Bill 2146 that would create a board to set guidelines for mortgage companies. Alabama is another state that introduced

guidelines centered around high cost fees and counseling for the buyer. Washington, D.C. enacted the *Protections from Predatory Lending Practices Act and Mortgage Foreclosure Improvements Act of 2000* to go into effect August 31, 2001. Connecticut recently passed the *Abusive Home Loan Lending Practices Act*. This Act limits prepaid finance charges on all purchases and refinance transactions and contains specific guidelines that focus on "high cost loans" by definition.

Unfortunately, in spite of state regulation, predatory lending is still practiced. This happens because of the influx of new loan officers from other industries. Training and understanding of the business for these new loan officers are limited to the attitude of the company for which they work. Some companies monitor the activity of its loan officers and restrict them from any practice of predatory lending.

Predatory lending continues to exist because the public, buyers, borrowers and real estate professionals themselves do not recognize what it is or even which lenders are involved in this illegal and unethical practice. Some red flags for borrowers and their agents should be:

- Unusually high up-front loan fees
- A loan officer guarantees buyer/borrowers that they will get a loan
- An out-of-state lender with no local office

- No Good Faith Estimate (GFE) provided - the GFE should explain all lending costs and is supposed to be mailed within three days of application
- A promise of “no closing costs” when what is really meant is that the closing costs will not be paid up-front but rather financed as part of the loan
- A verbal promise to lock in an interest rate
- Bait and switch: a low interest rate is quoted at loan application only to discover at closing that the rate quoted was for an adjustable rate mortgage

In order to help their clients avoid predatory lending, here are some practices that real estate professionals can pass along to their buyer-borrowers:

1. Buyer/borrowers should go to a recognized lender with a good local reputation.
2. Buyer/borrowers should get everything in writing.
3. Buyer/borrowers should understand the type of loan that was applied for.
4. Buyer/borrowers should receive a Good Faith Estimate form
5. All up-front fees and closing costs requested should be explained.
6. Buyer/borrowers should know that there is an option to lock or not to lock. If the loan is locked, have the lock term payment in writing.
7. Buyer/borrowers should find out who is going to fund the loan.
8. State lending laws should be reviewed and understood by real estate professionals.

Predatory lending has been around as long as currency has existed. However, unethical and illegal lending practices can only flourish where there is ignorance. Real estate professionals can significantly influence the practice of predatory lenders if they encourage consumers to seek guidance in obtaining loans and managing their debts.

For more information on predatory lending, visit the Mortgage Bankers association website at www.mbaa.org/resources/predlend/.

Reprinted from the 2002-2003 REEA Journal published by the Real Estate Educators Association.

Deadlines

Licensees should know that the Division has no discretion to extend deadlines beyond what the law requires. If you don't send your renewal papers in on time, there is a 30 days late period, in which you can renew your expired license by submitting your renewal application with a late fee in addition to the renewal fee. If you go beyond 30 days past your license expiration date, you may reinstate your license (up to 6 months after your license expiration date) by submitting your renewal application with the renewal fee, a reinstatement fee, and taking 12 hours of continuing education. The administrative rules require the Division to send out your renewal forms. But it is your responsibility, not the Division's, to ensure that you turn in your completed forms, on time, with the proper fees. On-time renewal fees are \$136 for mortgage lender individuals, and \$253 for mortgage lender entities. If the Division has not received a complete renewal application by your license expiration date, your license will expire.

